IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6337 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDULAL PURNASINH & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR MRUGEN PUROHIT for Petitioners.
MR LR PUJARI AGP for Respondent No. 1.
MR PRANAV G DESAI for Respondent Nos. 2 & 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/02/2007

ORAL JUDGMENT

1. Heard Mr.Mrugen Purohit, learned counsel for the petitioners, Mr.L.R. Pujari, learned Assistant Government

Pleader for the respondent No.1 and Mr.Pranav G. Desai, learned counsel for the respondent Nos.2 and 3.

2. Baroda Municipal Corporation, by resolution of the General Board dtd.31/1/1978, declared intention to prepare Town Planning Scheme for Baroda bearing No.13. The Draft Scheme was accordingly prepared by the Corporation, the same was sanctioned by the State Government with some modification under Notification No.GHP/93/81-TPS/1279-1829-L on 10/6/1981 and the same was published in the Government Gazette Part-IV-B dtd.6/8/1981 on page Nos.681 to 686.

3. Under the Government Notification, one Mr.P.N. Parikh was appointed as Town Planning Officer for finalization of the Draft Scheme, on his transfer Mr.D.A. Shah was to occupy the office and on transfer of Mr.D.A. Shah, Mr.P.N. Parikh was appointed as Town Planning Officer. Mr.Parikh declared his award of the Preliminary Scheme on 30/4/1987 and thereafter made his award of the Final Scheme on 25/4/1988.

4. So far as the present petitioners are concerned, deceased Puransinh Manoharlal Rajput and Harisinh Manoharlal Rajput, brothers, were owning land of Survey Nos.925 and 926(2) of village Gorva, Taluka and District ;

Vadodara. On their death, the petitioners became owners of the said two survey numbers. Both the survey numbers jointly admeasured 14,873 sq.mtrs. In Final Town Planning Scheme, Plot No.100 was given Final Plot N.176 and the area was reduced to 13,640 sq.mtrs. The Town Planning Officer required the petitioners and others to make some contributions as the value of their plots would be increased in view of the Town Planning Scheme and also directed award of some compensation in view of the reduction of the plotted area. Being aggrieved by the award made by the Town Planning Officer, the petitioners and number of others, filed Appeals under sec.54 of the Town Planning Act before the Board constituted under the Town Planning Act, for hearing and deciding the appeals. All the appeals were heard simultaneously and were finally disposed of on 31/12/1993. While disposing of the appeals, the Board led by the President, directed that incremental value has been fixed at the higher side, therefore, the same was required to be reduced by 20%. Except Appeal Nos.8, 18 and 47 of 1988, all other appeals were partly allowed and benefit of 20% of slashing of the incremental value was granted in favour of such appellants. Being aggrieved by the said appellate order,

the petitioners are before this Court.

5. Mr.Mrugen Purohit, learned counsel for the petitioners has taken me through the grounds raised in the writ application and the judgment passed by the Board. His submissions are that if the finalization of the scheme took more than 10 years then the petitioners cannot be asked to make contribution on the date of the finalization of the scheme. According to him, the contribution should be decided on the foundation as if the scheme was finalized on the date of declaration of the Town Planning scheme. His submission is that as the delay occasioned at the end of the authority, the petitioners cannot be allowed to suffer.

6. The question posed for consideration, in fact, raises an interesting question, but, unfortunately, the very question was not raised before the Board. The present would not be a pure question of law, but would be a mixed question of facts and law. It does not have factual foundation before the High Court, because, nobody knowns that what could have been the development charges for the plot on the date of declaration of the scheme or on the date of the finalization of the scheme / making of the award.

7. It was then submitted by the learned counsel for the petitioners that the President of the Board was required to decide the questions of law before he could proceed with the hearing and was also required to declare the procedure which he was to follow in the course of the hearing.

8. From the order passed by the Board, it clearly appears that a particular procedure was declared and lawyers appearing before the Board of appeal did not object to that declaration. The President of the Board has clearly mentioned that whenever the questions of law, leading of evidence etc. had come up for consideration, he himself had decided the same. From the facts narrated in the order, it does not appear that anybody had raised any objection either before the President or before the Board that such procedure could not be adopted and the President was committing some wrong. If the petitioners were party to the proceedings and were not raising any objection at the time of hearing, then, under the circumstances, it cannot now be argued that the Board committed any wrong.

9. No other point was raised by the learned counsel for the petitioners.

10. Taking into consideration the totality of the circumstances and legal position and the reasons aforesaid, I do not find any reason to interfere in the matter. The petition deserves to and is accordingly dismissed. No costs. Interim relief, if any is vacated.

(R.S. GARG, J.)

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